IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appeal No. (not yet assigned)	:
In re Application of	:
NEREIDA MARIA MENENDEZ et al.	: Group Art Unit: 3629
Serial No. 09/698,502	: Examiner: Naresh Vig
Filed: October 27, 2000	: Attorney Docket No. 285277-00018
METHOD FOR COMPLETING AND STORING AN ELECTRONIC RENTAL AGREEMENT	: Confirmation No. 6442

APPELLANT'S SECOND REPLY BRIEF

November 7, 2005

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Appellant's Second Reply Brief under 37 CFR § 41.41 is in reply to the Examiner's (second) Answer, mailed on September 7, 2005, for the above-captioned application.

In the Examiner's (second) Answer (page 3, first paragraph; page 5, third paragraph; and page 6, first paragraph), the Examiner discusses that the reference, Hertz, deals with a reservation having a penalty clause. That point is dealt with in Appellant's Appeal Brief at page 14, last paragraph, through page 15, first paragraph.

In the Examiner's (second) Answer (page 3, last paragraph through page 4, first paragraph), the Examiner cites portions of the disclosure of Appellant's application and states that Appellant has not claimed "permitting a vehicle to be taken and used by a renter when there is an arrangement between parties."[1] Appellant, however, has consistently argued

[1] In the Examiner's (first) Answer (p. 4, ¶3; p. 8, ¶1), the Examiner stated that he "reads rental agreement as an arrangement between parties regarding a course of action; a covenant". In Appellant's (first) Reply Brief (p. 2, ¶5, continuing to p. 3), Appellant argued that a company, such as Hertz, would not permit a vehicle to be taken and used by a renter when there was a mere "arrangement between parties regarding a course of action" as was asserted by the Examiner.

that Claim 1, unlike Hertz, covers an electronic rental agreement (*i.e.*, electronic rental contract which is legally binding on the parties entering into it).

In the Examiner's (second) Answer (page 4, third paragraph), the Examiner argues that Appellant has not clearly defined "electronic rental agreement" and states, with respect to Figure 6L of the application, that Appellant has not clearly defined that the "confirmation page is the legally binding contract as argued" by the Appellant.

After the filing date of Appellant's (first) Reply Brief, on July 12, 2005 (and as amended on July 14, 2005), the Court of Appeals for the Federal Circuit issued an opinion relevant to the issue of claim construction. The Court stated that:

> [i]mportantly, the person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification. ... It is the person of ordinary skill in the field of the invention through whose eyes the claims are construed. Such person is deemed to read the words used in the patent documents with an understanding of their meaning in the field, and to have knowledge of any special meaning and usage in the field. The inventor's words that are used to describe the invention—the inventor's lexicography—must be understood and interpreted by the court as they would be understood and interpreted by a person in that field of technology. Thus the court starts the decisionmaking process by reviewing the same resources as would that person, viz., the patent specification and the prosecution history.
>
> * * *
>
> Because the meaning of a claim term as understood by persons of skill in the art is often not immediately apparent, and because patentees frequently use terms idiosyncratically, the court looks to "those sources available to the public that show what a person of skill in the art would have understood disputed claim language to mean." ... Those sources include "the words of the claims themselves, the remainder of the specification, the prosecution history, and extrinsic evidence concerning relevant scientific principles, the meaning of technical terms, and the state of the art."
>
> * * *
>
> [J]udges are free to consult dictionaries and technical treatises at any time in order to better understand the underlying technology and may also rely on dictionary definitions when construing claim terms, so long as the dictionary definition does contradict any definition found in or ascertained by a reading of the patent documents.

Phillips v. AWH Corp., 415 F.3d 1303, 1314, 1322-23, 75 U.S.P.Q.2d 1321, 1326-27, 1334 (Fed Cir. 2005).

As to the Examiner's point, Appellant has never argued that the "Confirmation" of Figure 6L is an "electronic rental agreement" (*i.e.*, electronic rental contract which is legally binding on the parties entering into it). However, in considering the meaning of "electronic rental agreement" of Claim 1 in the context of the entire patent application, including the specification and the drawings, Appellant's specification, at page 23, lines 27-28, in connection with Figure 6L, clearly recites (***emphasis added***) that "[t]he web page 484 further includes a "Print" button 510 to permit the customer to print the final ***rental agreement***." As clearly shown in Figure 6L (***emphasis added***), the button 510 states "print ***contract***". Clearly, this confirms that the person of ordinary skill in the field of the invention through whose eyes (and not the Examiner's eyes) the claims are construed, would consider the term "rental agreement" to be one in the same as "contract". See, also, Appellant's (first) Reply Brief at page 3, paragraphs 1-3, which discusses page 12, line 6 and Figure 6K of the application. Hence, it is submitted that the Examiner errs by use of various dictionary definitions for the single word "agreement," which definitions contradict the above definition for "rental agreement" (*i.e.*, contract), which is found in or ascertained by a reading of the patent application documents under the guidance of *Phillips*. In complete contrast, Appellant's dictionary definition confirms Appellant's claim construction in view of the patent application. Under this claim construction, which is through the eyes of the person of ordinary skill in the field of the invention, an "electronic rental agreement" is one and the same as an electronic rental contract which is legally binding on the parties entering into it.

In the Examiner's (second) Answer (page 5, first and third paragraphs; and page 6, first paragraph), the Examiner, without citation, refers to the term "agreement" in isolation rather than the recited "rental agreement" or "electronic rental agreement". This point was dealt with above, and at page 3, last paragraph of Appellant's (first) Reply Brief.

In the Examiner's (second) Answer (page 6, third paragraph), the Examiner argues, without specific citation to any portion of Hertz or Avis, that a "customer will receive a vehicle at the quoted price when they arrive to receive the vehicle." This point was clearly dealt with at the last paragraph of page 5 and the first paragraph of page 6 of Appellant's Appeal Brief.

In the Examiner's (second) Answer (page 6, last paragraph), the Examiner again argues, without specific citation to any portion of Hertz.

Similarly, the Examiner provides no citations at page 8, second paragraph. Even if what the Examiner states in the second sentence of that paragraph is true, although this is not admitted, as was discussed beginning at page 4, fourth paragraph through the penultimate paragraph of page 5 of Appellant's (first) Reply Brief, the Examiner has failed to cite a pertinent reference within the context of Appellant's Claims 1, 10, 11 and 12, taken as a whole.

Conclusion

Claims 1-18 are patentable over the prior art of record. Therefore, it is requested that the Board reverse the Examiner's rejections of Claims 1-18 and remand the application to the Examiner for the issuance of a Notice of Allowance.

Respectfully submitted,

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This form is submitted in duplicate

PTO/SB/17 (12-04)
Approved for use through 07/31/2006. OMB 0651-0032
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Effective on 12/08/2004.
Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

FEE TRANSMITTAL
For FY 2005

☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT ($) 500.00

Complete if Known	
Application Number	09/698,502
Filing Date	October 27, 2000
First Named Inventor	NEREIDA MARIA MENENDEZ
Examiner Name	Naresh Vig
Art Unit	3629
Attorney Docket No.	285277-00018

METHOD OF PAYMENT (check all that apply)

☐ Check ☑ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): _____

☑ Deposit Account Deposit Account Number: 02-2556 Deposit Account Name: Eckert Seamans

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

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FEE CALCULATION

1. BASIC FILING, SEARCH, AND EXAMINATION FEES

	FILING FEES		SEARCH FEES		EXAMINATION FEES		
Application Type	**Fee ($)**	**Small Entity Fee ($)**	**Fee ($)**	**Small Entity Fee ($)**	**Fee ($)**	**Small Entity Fee ($)**	**Fees Paid ($)**
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

2. EXCESS CLAIM FEES

Fee Description	**Fee ($)**	**Small Entity Fee ($)**
Each claim over 20 or, for Reissues, each claim over 20 and more than in the original patent	50	25
Each independent claim over 3 or, for Reissues, each independent claim more than in the original patent	200	100
Multiple dependent claims	360	180

Total Claims		**Extra Claims**	**Fee ($)**	**Fee Paid ($)**
_____	- 20 or HP =	_____	x _____	= _____

HP = highest number of total claims paid for, if greater than 20

Indep. Claims		**Extra Claims**	**Fee ($)**	**Fee Paid ($)**
_____	- 3 or HP =	_____	x _____	= _____

HP = highest number of independent claims paid for, if greater than 3

Multiple Dependent Claims

Fee ($)	**Fee Paid ($)**
_____	_____

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper, the application size fee due is $250 ($125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

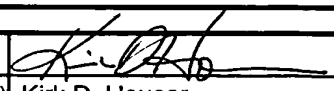
Total Sheets		**Extra Sheets**		**Number of each additional 50 or fraction thereof**	**Fee ($)**	**Fee Paid ($)**
_____	- 100 =	_____	/ 50 =	_____ (round **up** to a whole number)	x _____	= _____

4. OTHER FEE(S) **Fees Paid ($)**

Non-English Specification, $130 fee (no small entity discount) _____

Other: Filing a Second Reply Brief in Reply to Examiner's (second) Answer $500.00

SUBMITTED BY

Signature		Registration No. (Attorney/Agent) 37,357	Telephone 412.566.6083
Name (Print/Type)	Kirk D. Houser		Date November 7, 2005

AF/3629

PTO/SB/21 (09-04)
Approved for use through 07/31/2006. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission: 8

Application Number	09/698,502
Filing Date	October 27, 2000
First Named Inventor	NEREIDA MARIA MENENDEZ
Art Unit	3629
Examiner Name	Naresh Vig
Attorney Docket Number	285277-00018

ENCLOSURES *(Check all that apply)*

- [x] Fee Transmittal Form (2x)
- [ ] Fee Attached
- [ ] Amendment/Reply
  - [ ] After Final
  - [ ] Affidavits/declaration(s)
- [ ] Extension of Time Request (2x)
- [ ] Express Abandonment Request
- [ ] Information Disclosure Statement
- [ ] Certified Copy of Priority Document(s)
- [ ] Reply to Missing Parts/ Incomplete Application
  - [ ] Reply to Missing Parts under 37 CFR 1.52 or 1.53
- [ ] Drawing(s)
- [ ] Licensing-related Papers
- [ ] Petition
- [ ] Petition to Convert to a Provisional Application
- [ ] Power of Attorney, Revocation Change of Correspondence Address
- [ ] Terminal Disclaimer
- [ ] Request for Refund
- [ ] CD, Number of CD(s) _____
  - [ ] Landscape Table on CD
- [ ] After Allowance Communication to TC
- [ ] Appeal Communication to Board of Appeals and Interferences
- [x] Appeal Communication to TC **(Appeal Notice, Brief, Reply Brief)**
- [ ] Proprietary Information
- [ ] Status Letter
- [x] Other Enclosure(s) (please Identify below):

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Remarks

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

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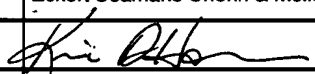
Signature			
Printed name	Kirk D. Houser		
Date	November 7, 2005	Reg. No.	37,357

CERTIFICATE OF TRANSMISSION/MAILING

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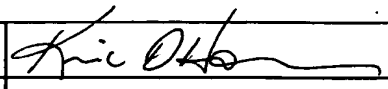
Signature			
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